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August 12, 2011

Ms. Cynthia L. Quarterman, Administrator
Pipeline and Hazardous Materials Safety Administration
East Building, 2nd Floor
1200 New Jersey Ave., SE
Washington, DC 20590

Dear Ms. Quarterman:

As you are aware, Congress is currently considering reauthorization of the federal Pipeline Safety Act. In connection with Congress's ongoing deliberations regarding this legislation, I am writing to request information regarding the implementation of safety recommendations made by the National Transportation Safety Board (NTSB). NTSB safety recommendations are issued following investigations of accidents involving oil and gas pipelines and play a key role in identifying and correcting possible safety deficiencies. Given the potential risk that pipeline accidents pose to human lives and the environment, it is essential that NTSB recommendations growing out of prior investigations into pipeline safety accidents are promptly implemented in order to prevent similar accidents from recurring. However, it has come to my attention that in the past numerous NTSB recommendations regarding pipeline safety have been met with an unsatisfactory response, or were ignored altogether by pipeline operators.

According to NTSB's Safety Recommendations Database,¹ from 2001 to 2011, 132 NTSB safety recommendations to addressees such as pipeline operators or the American Petroleum Institute were closed after receiving an "unacceptable" response from the addressee, while 26 recommendations were closed without receiving any response at all from the operator. These closed recommendations involved gas explosions that killed dozens of people (the 1998 Río Piedras Explosion in Puerto Rico), left dozens of residents homeless (such as the Indianapolis explosion in 2002), as well as a pipeline rupture that spilled thousands of barrels of oil (the San Jacinto River oil spill in 2001). While it appears that all of these cases were closed

¹ http://www.nts.gov/safety/safety_recs.html

under previous Administrations, I am nonetheless concerned about pipeline accidents that could have been prevented had NTSB's safety recommendations been fully implemented.

Recent events in Montana highlight the importance of fulfilling NTSB safety recommendations. On July 1, 2011, the ExxonMobil Silvertip pipeline ruptured, spilling 1,000 barrels of crude oil into the Yellowstone River. Preliminary reports suggest that rising floodwaters, coupled with the shallow depth at which the pipeline was buried, contributed to the spill. This is not the first time this has happened. In October 1994 the San Jacinto River in Texas flooded, causing eight pipelines to rupture and spilling more than 35,000 barrels of petroleum into the river. More than 17 years have passed since the San Jacinto spill, yet apparently the lessons learned from that accident were not enough to prevent a similar disaster.

I am therefore writing to inquire what controls the PHMSA has put in place to ensure that NTSB safety recommendations are implemented by operators in an expeditious manner. Specifically, I would like PHMSA to respond to the following questions:

1. The NTSB's Safety Recommendations Database lists two outstanding pipeline safety recommendations (P-11-001 and P-11-002) that are still awaiting response from PHMSA. These recommendations were issued in June and address issues stemming from the San Bruno gas explosion that killed 8 people in September 2010 and suggest that PHMSA issue guidance to operators of natural gas pipelines regarding the sharing of information with 911 operators and emergency responders. What is PHMSA currently doing to ensure that each of these safety recommendations are fully implemented in a satisfactory and timely manner?
2. PHMSA has statutory authority to order injunctive relief and to impose administrative civil penalties for violations of its regulations and orders, including corrective action orders. For the past 10 years, in each case in which the addressee of an NTSB safety recommendation did not respond in a satisfactory manner to the proposed safety recommendations, please describe all actions taken by PHMSA to ensure or enforce operator compliance. Please also fully describe the process by which PHMSA uses its powers to guarantee conformity with NTSB safety recommendations.
3. The majority of NTSB safety recommendations classified as having been met with "unacceptable action" were closed prior to the start of the current Administration. Given that many of the safety concerns raised by these cases remain unaddressed, has PHMSA considered reopening any of these cases, or otherwise pushing for the implementation of the recommendations in question? If not, why not? If yes, please fully describe what actions PHMSA has taken in this area.

4. Has PHMSA conducted any internal reviews of the closed cases in which an unsatisfactory action was taken or in which the addressee gave no response? If so, please provide the results of any such reviews. If not, why not?
5. In response to the 1994 San Jacinto River spill, the NTSB recommended that the American Petroleum Institute (API), the Interstate Natural Gas Association of America, and the Association of Oil Pipe Lines develop construction and design standards adequate for pipelines to safely cross floodplains and streambeds.² Although the accident occurred in 1994 and API announced its intent to publish new standards in March of 2001, it appears that the new guidelines were not released until 2005.³ In the 11 years that passed between the accident and the final issue of API's guidelines, did PHMSA review or revise existing regulations to address the threat that river flooding poses to pipelines? If yes, please describe any changes or discussion about changes that took place. If no, why did PHMSA allow more than a decade to pass without taking any action to address the causes of the San Jacinto spill?
6. In November 1994, the U.S. Department of Transportation Research and Special Programs Administration (RSPA) issued an advisory to pipeline operators noting that the San Jacinto spill was likely caused by "the extreme force of the flowing water ... or from pipelines being struck by heavy debris that was reported as having flowed down river."⁴ In light of these observations, did PHMSA review its regulations concerning the minimum burial depth for pipelines crossing rivers? If no, why did PHMSA believe existing minimum depth requirements were sufficient to prevent pipeline damage during periods of flooding?
7. On July 27, 2011, PHMSA published a notice in the Federal Register (See Federal Register/Vol. 76, No. 144/Wednesday, July 27, 2011/Notices, Docket No PHMSA-2011-0177) regarding the issuance of an advisory bulletin to all owners and operators of gas and hazardous liquid pipelines to communicate the potential for damage to pipeline facilities caused by severe flooding. The PHMSA advisory urges pipeline operators to take nine specific actions to prevent and mitigate damage to pipeline facilities and ensure public and environmental safety in areas affected by flooding. Is compliance with the nine actions mentioned in the advisory mandatory or optional? Are there any penalties for pipeline operators who fail to comply with some or all of the steps called for in the advisory bulletin? What actions, if any, does PHMSA anticipate taking to monitor industry compliance with the recommended measures in the advisory bulletin?

² See NTSB Safety Recommendation P-96-024.

³ See American Petroleum Institute, "Guidelines for Onshore Hydrocarbon Pipelines Affecting High Consequence Floodplains: API Recommended Practice 1133," First Edition, February 2005.

⁴ Federal Register Vol. 56, No 212/ Thursday, November 3, 1994, pages 55152 – 55153.

Thank you for your attention to this matter. Please provide a response to this request within 14 days, or no later than Friday, August 26, 2011. Should you have any questions about this request, please contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,

A handwritten signature in blue ink that reads "Edward J. Markey". The signature is written in a cursive, flowing style.

Edward J. Markey